No. 91-8674

In the Supreme Court of the United States

OCTOBER TERM, 1992

JOHN ANGUS SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether 18 U.S.C. 924(c)(1), which prohibits the "use[]" of a firearm "during and in relation to any * * * drug trafficking crime," proscribes the exchange of a firearm for narcotics.

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OPINION BELOW

The opinion of the court of appeals (J.A. 33-38) is reported at 957 F.2d 835.

JURISDICTION

The judgment of the court of appeals was entered on April 8, 1992. The petition for a writ of certiorari was filed on June 19, 1992, and was granted on October 5, 1992. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 924 (Supp. II 1990) provides in pertinent part:

* * * * *

(c)(1) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, * * * and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. * * * Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

* * * * *

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioner was convicted of conspiracy to possess cocaine with intent to distribute it, in violation of 21 U.S.C. 846; attempted possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 846; using a machinegun fitted with a silencer during and in relation to a drug trafficking crime, in violation of 18 U.S.C. 924(c)(1); possession of a firearm by a previously convicted felon, in violation of 18 U.S.C. 922(g)(1); possession of unregistered automatic firearms, in violation of 26 U.S.C. 5861(d); possession of unregistered silencers, in violation of 26 U.S.C. 5861(i); interstate transportation of a stolen motor vehicle, in violation of 18 U.S.C. 2312; and possession of firearms by a fugitive from justice, in violation of 18 U.S.C. 922(g)(2).[1] He was sentenced to 393 months' imprisonment, to be followed by a three-year period of supervised release. J.A. 32. The court of appeals affirmed.

1. The evidence at trial showed that during December 1989 petitioner, accompanied by co-defendant Charles Roy Davis, traveled from Tennessee to Florida for the purpose of obtaining a quantity of cocaine for resale. Tr. 452-460. After arriving in Florida, petitioner met with an acquaintance named Deborah Hoag who, unbeknownst to him, was a police informant. Tr. 200-201, 460-461. Petitioner gave Hoag a quantity of money for the purchase of cocaine. Following the purchase, the trio went to the motel room

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[1] Petitioner's co-defendant Charles Roy Davis pleaded guilty to five counts of the indictment and testified on behalf of the government at petitioner's trial.

where Hoag was staying. There, they were joined by a drug dealer who gave Hoag another rock of cocaine. The dealer and petitioner then discussed a MAC-10 machinegun equipped with a silencer that petitioner owned. Petitioner promised to discuss selling the gun to the drug dealer if petitioner's arrangement to sell it to another potential buyer fell through. Tr. 461-463.

Shortly thereafter, Hoag telephoned the Broward County Sheriff's Office and informed the police of the pending sale of the machinegun. J.A. 11-12; Tr. 201. As a result, an undercover officer, posing as a pawnshop dealer, visited Hoag's motel room where he introduced himself to petitioner. Petitioner informed the officer that he had an automatic MAC-10 machinegun with a silencer for sale. After displaying what he represented to be a "fully automatic MAC-10" and accompanying silencer for the officer's inspection, petitioner stated that he wanted "two ounces of good cocaine" in exchange for it. J.A. 13-17. Petitioner then pulled a nine millimeter semiautomatic pistol from his waistband, placed it on a table, and told the officer that he trusted him. Petitioner also advised the officer that he had evaded efforts by law enforcement officers in Tennessee to arrest him on unrelated charges. J.A. 17-18.

The undercover officer then left the motel room for the ostensible purpose of obtaining cocaine; instead, he returned to his office to report his observations and arrange for petitioner's arrest. Tr. 204, 209-214. After the undercover officer's departure, other officers who were keeping the motel under surveillance saw petitioner leave the building, place a gun bag in his vehicle, and drive away. Tr. 237-238.

When the police attempted to stop petitioner's vehicle in order to arrest him, he led them on a high-speed chase at speeds of up to 100 miles per hour. Eventually, the police cornered petitioner in a cul-de-sac. Petitioner rammed his vehicle into a police car and injured its driver, who fired at petitioner and wounded him. Petitioner was then arrested. Tr. 238-246.

At the time of the arrest, petitioner was carrying in his waistband the loaded handgun that he had previously shown to the undercover officer at the motel. Tr. 205-206, 246, 257, 263-265. A subsequent search of petitioner's vehicle revealed the presence of the MAC-10 machinegun, together with a silencer, ammunition, and a "fast feed" mechanism for the weapon. The search also revealed a MAC-11 machinegun with a loaded magazine, a loaded .45 caliber pistol, a .22 caliber pistol with a scope, and a homemade silencer. Tr. 204-205, 313-315, 319-324, 328-329. The MAC-10 had been modified to fire in a fully automatic mode and was capable of discharging approximately 950 rounds per minute. Tr. 537-540; J.A. 36 n.6.

2. Petitioner was subsequently charged with, *inter alia*, one count of "us[ing] a firearm, that is a MAC-10 machinegun * * * fitted with a silencer, during and in relation to * * * drug trafficking crimes," in violation of 18 U.S.C. 924(c). J.A. 4-5.[2] Section 924(c) imposes a mandatory 30-year sentence for the use of a machinegun or a silencer in relation to a drug trafficking offense. 18 U.S.C. 924(c)(1).

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[2] The drug trafficking crimes specified in the indictment were the attempted possession of cocaine with intent to distribute it and the conspiracy to commit that offense. J.A. 3-4.

With respect to the Section 924(c) count, the district court instructed the jury that it could convict only if it found that petitioner "knowingly used" the machinegun "while committing * * * [a] drug trafficking crime." J.A. 21. The court further instructed the jury as follows:

> Section 924(c) does not require that a firearm be shown, displayed, brandished or fired.
>
> You may find a defendant used a firearm within the meaning of Section 924(c), that is, during and in relation to a drug trafficking felony if you find that the firearm named in the count related to the defendant was an integral part of a drug trafficking crime as I have defined it.
>
> To be an integral part of such a crime, a firearm must be, first, present, second, available to the defendant in question, and third, in some way connected to the underlying drug trafficking crime.

J.A. 21-22. Petitioner did not object to the instruction as given.

3. On appeal, petitioner argued that Section 924(c)(1) applies only to situations in which the firearm is used as a weapon during a narcotics transaction and not to drug transactions in which the firearm is employed as a medium of exchange for narcotics. Petitioner relied on the Ninth Circuit's decision to that effect in *United States* v. *Phelps*, 877 F.2d 28 (1989).

The court of appeals found *Phelps* unpersuasive, explaining that "the *Phelps* opinion's stress on a defendant's alleged intentions to use the weapon offensively is incorrect. The plain language of the statute supplies no such requirement." J.A. 34-35 (footnote omitted). Instead, the court of appeals held that the

language of Section 924(c)(1) unambiguously encompasses the exchange of firearms for drugs. The court accordingly found no need to consider the legislative history of the statute. The court noted, however, that it "would reach the same conclusion if forced to confront the legislative history." J.A. 35 n.5.

The court of appeals further held that Section 924(c)(1) does not require that the firearm be " 'fired, brandished, or even displayed during the drug trafficking offense' " in order for it to be "use[d]" during and in relation to a drug trafficking offense. J.A. 36. Instead, the court explained, "all that is needed [to establish a violation of Section 924(c)(1)] is 'an intent to use the weapon to facilitate *in any manner* the commission of the [drug trafficking] offense.' " J.A. 37 (quoting *United States* v. *Phelps*, 895 F.2d 1281, 1286 (9th Cir. 1990) (Kozinski, J., dissenting from denial of rehearing en banc)). Accordingly, the court concluded "that trading guns for drugs constitutes use of a firearm during and in relation to a drug trafficking offense in violation of 18 U.S.C. § 924(c)(1)." J.A. 37-38.

SUMMARY OF ARGUMENT

A. Section 924(c)(1) applies to anyone who "during and in relation to any * * * drug trafficking crime * * * uses * * * a firearm." 18 U.S.C. 924(c)(1). The terms "uses" and "in relation to," when construed according to their ordinary meaning, are unquestionably broad enough to encompass the employment of a firearm as a medium of exchange for illegal drugs. If anything, the use of a firearm to purchase drugs is more clearly a "use[]" "in rela-

tion to" a drug trafficking crime than is the use of a firearm as a weapon, because in the former case the firearm is an integral part of the crime itself.

Petitioner contends that the term "uses," as set forth in Section 924(c)(1), has been rendered ambiguous by conflicting lower court decisions, and that recourse to the statute's legislative history is therefore appropriate. Petitioner errs, however, in assuming that a division of judicial authority can render ambiguous the language of a statute that is plain on its face. Section 924(c)(1) unambiguously proscribes petitioner's conduct, and reference to the statute's legislative history is therefore unnecessary.

Petitioner also errs in suggesting that the lower courts have construed the term "uses" in an inconsistent manner. With the lone exception of the Ninth Circuit in *United States* v. *Phelps*, 877 F.2d 28, 29-31 (1989), the courts of appeals have repeatedly held that the term "uses" in Section 924(c)(1) does not require that the firearm be used as a weapon. To the contrary, any use of a firearm to facilitate a predicate offense, even if the firearm is unavailable to the defendant or could not be used as a weapon, constitutes a "use[]" of the firearm for purposes of Section 924(c)(1).

B. Even if recourse to the statute's legislative history were appropriate in this case, the result would be the same. Section 924(c)(1) had its genesis in a floor amendment, sponsored by Representative Poff, to the Gun Control Act of 1968. Nothing in the language or legislative history of that amendment supports petitioner's claim that Congress intended the statute to apply only to the use of a firearm as a weapon. To the contrary, Representative Poff stated that the purpose of his amendment was "to persuade

the man who is tempted to commit a Federal felony to leave his gun at home." 114 Cong. Rec. 22,231 (1968). To the extent any of the 1968 enactment history is relevant in construing the meaning of Section 924(c)(1), it is the statement of Representative Poff, the provision's sponsor, that should be given the greatest weight.

Congress amended Section 924(c)(1) in 1984, but again there is nothing in the legislative history of that amendment to support petitioner's cramped reading of the statute. Petitioner relies on isolated statements taken from the Senate Judiciary Committee's report on the 1984 amendment, but those statements in fact indicate that Congress understood the statute to apply in cases, like this one, in which a firearm in fact plays a role in the predicate offense.

Finally, Congress again amended Section 924(c)(1) in 1986, by adding "drug trafficking crime[s]" as a new category of predicate offenses under the statute. The legislative history of the 1986 amendment indicates that Congress acted in order to "[p]rovide an important new weapon against narcotics traffickers" and to "protect[] * * * law enforcement officers from the proliferation of machine guns and high-powered 'assault-type' weapons that are increasingly being used by criminals." H.R. Rep. No. 495, 95th Cong., 2d Sess. 2, 7 (1986). Petitioner's conduct, which was intended to result in the transfer of a dangerous weapon to a drug dealer, falls squarely within the type of behavior that Congress sought to deter when it added drug trafficking crimes to the list of predicate offenses covered by Section 924(c)(1).

C. The rule of lenity is not applicable in this case. That rule comes into play only in cases involving a

" 'grievous ambiguity or uncertainty in the language and structure of the Act' " that cannot be resolved by recourse to all the normal aids to statutory construction. *Chapman* v. *United States*, 111 S. Ct. 1919, 1926 (1991). In this case, the plain language of the statute unambiguously proscribes petitioner's conduct, and thus there is no room for lenity.

ARGUMENT

THE EXCHANGE OF A FIREARM FOR A CONTROLLED SUBSTANCE CONSTITUTES THE USE OF THE FIREARM DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

The court of appeals correctly held that the plain language of 18 U.S.C. 924(c)(1) proscribes the exchange of firearms for controlled substances. J.A. 33-38; accord *United States* v. *Harris*, 959 F.2d 246, 261-262 (D.C. Cir.), cert. denied, 113 S. Ct. 362 (1992). The only court to reach a contrary conclusion, the Ninth Circuit, did so only by rejecting the unambiguous language of Section 924(c)(1) in favor of a strained reading of the statute's legislative history. See *United States* v. *Phelps*, 877 F.2d 28, 29-31 (1989). For the reasons set forth below, the statutory construction urged by petitioner and accepted by the *Phelps* court is contrary to both the language and the legislative history of the statute, and should be rejected.

A. The Exchange Of Firearms For Drugs Is Covered By The Express Language Of 18 U.S.C. 924(c)(1)

1. As this Court has explained, "[t]he task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). See, *e.g.*, *Demarest* v. *Manspeaker*, 111 S. Ct. 599, 602 (1991); *Pennsylvania Public Welfare Dep't* v. *Davenport*, 495 U.S. 552, 557-558 (1990); *Mallard* v. *United States District Court*, 490 U.S. 296, 300 (1989). Despite petitioner's argument to the contrary, "[i]n this case it is also where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.' " *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. at 241, quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917). See also *Connecticut Nat'l Bank* v. *Germain*, 112 S. Ct. 1146, 1149 (1992).

Section 924(c)(1) imposes an enhanced sentence on anyone who "during and in relation to any * * * drug trafficking crime * * * uses * * * a firearm." 18 U.S.C. 924(c)(1). The statute contains no definition of the terms "in relation to" or "uses," and thus those terms must be given their "ordinary * * * common meaning." *Perrin* v. *United States*, 444 U.S. 37, 42 (1979); see also *Chapman* v. *United States*, 111 S. Ct. 1919, 1925 (1991).

The dictionary definition of "use" is "to put into action or service," to "have recourse to or enjoyment of," to "employ," "to carry out a purpose or action by means of," to "make instrumental to an end or process," or to "utilize." *Webster's Third New International Dictionary* 2523-2524 (1986). Thus, the "ordinary * * * common meaning" of that term as set forth in Section 924(c)(1) broadly embraces any conduct by a defendant with a firearm calculated " 'to put [it] into action or service; have recourse to i[t] * * * make [it] instrumental to an end or process; apply [it] to advantage * * * utilize [it] * * * [or] employ [it].' " *United States* v. *Cordero*, 668 F.2d

32, 43 n.16 (1st Cir. 1981).[3] A defendant who "employ[s]" a gun in order "to carry out [the] purpose or action" of purchasing drugs by "utiliz[ing]" it as a medium of exchange has unquestionably "use[d]" the gun within the common meaning of that term.

The phrase "in relation to" means with "reference" to or with "respect" to. *Webster's Third New International Dictionary* 1916 (1986). As the lower courts have uniformly held, "[t]he phrase 'in relation to' is broad." *United States* v. *Phelps*, 877 F.2d 28, 30 (9th Cir. 1989).[4] Nothing about that phrase suggests that it applies only to the use of a firearm as a weapon; to the contrary, the statute expressly contemplates application to anyone who "uses" a firearm "in relation to" a predicate offense, without in any way limiting the types of uses covered.

If anything, the use of a firearm as a medium of exchange is *more* clearly "in relation to" the predicate offense of possessing controlled substances with intent

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[3] See also *Astor* v. *Merritt*, 111 U.S. 202, 213 (1884), where the Court defined the term "use" as meaning "to employ, [or] to derive service from."

[4] See, *e.g.*, *United States* v. *Harris*, 959 F.2d at 261 ("in relation to" limitation "requires no more than that the guns facilitate the predicate offense in some way"); *United States* v. *Torres-Medina*, 935 F.2d 1047, 1048 (9th Cir. 1991) ("in relation to" requirement is satisfied if the firearm "played some role in[] the underlying crime"); see also *United States* v. *Young-Bey*, 893 F.2d 178, 181 (8th Cir. 1990) (firearms are "used during and in relation to drug trafficking" where they are "used to further the drug venture"); cf. *District of Columbia* v. *Greater Washington Bd. of Trade*, No. 91-1326 (Dec. 14, 1992), slip op. 4 (noting the " 'deliberately expansive' " nature of the phrase "relate to" as used in the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*).

to distribute them than is the use of a firearm as a weapon. "Far more than the ordinary case where a gun is carried by one of the parties merely for protection, the gun here was an integral part of the transaction—it was the sweetener that made the deal work." *United States* v. *Phelps*, 895 F.2d 1281, 1283 (9th Cir. 1990) (Kozinski, J., dissenting from denial of rehearing en banc). Where the firearm is the agreed-upon payment for drugs, and the predicate offense is the possession of those drugs with intent to distribute them, the firearm's use is unquestionably "in relation to" the drug offense under the "ordinary * * * common meaning" of that phrase.

2. Petitioner contends (Pet. Br. 6-9) that the term "uses" as set forth in Section 924(c)(1) has been rendered ambiguous by decisions of the lower courts, and that recourse to the statute's legislative history is therefore necessary in order to resolve that judicially created ambiguity. Petitioner cites no authority, however, for the proposition that the existence of inconsistent lower-court decisions compels recourse to a statute's legislative history even when the language of the statute is clear on its face. This Court's cases foreclose that interpretive approach. See *e.g.*, *Toibb* v. *Radloff*, 111 S. Ct. 2197, 2199-2200 (1991) (finding recourse to legislative history unnecessary because statutory language was clear, even though courts of appeals were divided over the question); cf. *Moskal* v. *United States*, 111 S. Ct. 461, 465 (1990) (statute not rendered "ambiguous" for purposes of the rule of lenity merely because of a division of judicial authority). As this Court has repeatedly held, where the language of a statute is unambiguous on its face and

does not lead to an absurd result, a court should not rely on the statute's legislative history to determine its meaning. *Connecticut Nat'l Bank* v. *Germain*, 112 S. Ct. 1146, 1149 (1992); *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 n.3 (1989); *United Air Lines, Inc.* v. *McMann*, 434 U.S. 192, 199 (1977).

In any event, petitioner errs in suggesting (Pet. Br. 6-7) that the cases on which he relies reveal "ambiguity with regard to the meaning of the statute" as the result of judicial "expan[sion]" of the word "use." With the lone exception of the Ninth Circuit's decision in *Phelps*, the decisions in this area demonstrate that the common understanding of the term "uses" is broad enough to embrace any employment of a firearm to facilitate a drug trafficking offense.

In construing Section 924(c)(1), the courts of appeals have repeatedly indicated that the term "uses" does not require that the firearm be employed as a weapon.[5] As then-Judge Kennedy explained in *United States* v. *Stewart*, 779 F.2d 538, 540 (9th Cir. 1985), cert. denied, 484 U.S. 867 (1987):

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[5] See, *e.g.*, *United States* v. *Hager*, 969 F.2d 883, 889 (10th Cir. 1992) ("the cases are unanimous in holding that a defendant can 'use' a firearm without firing, brandishing or displaying it"); *United States* v. *Featherson*, 949 F.2d 770, 776 (5th Cir. 1991), cert. denied, 112 S. Ct. 1698, 112 S. Ct. 1771, 113 S. Ct. 361 (1992); *United States* v. *Torres-Medina*, 935 F.2d 1047, 1049 (9th Cir. 1991); *United States* v. *Paz*, 927 F.2d 176, 179 (4th Cir. 1991); *United States* v. *Poole*, 878 F.2d 1389, 1393 (11th Cir. 1989); *United States* v. *Meggett*, 875 F.2d 24, 29 (2d Cir.), cert. denied, 493 U.S. 858 (1989); see also *United States* v. *Plummer*, 964 F.2d 1251, 1255 (1st Cir. 1992); *United States* v. *Long*, 905 F.2d 1572, 1576 (D.C. Cir.) (Thomas, J.) ("a defendant can 'use' a firearm without actively employing it"), cert. denied, 111 S. Ct. 365 (1990).

> If the firearm is within the possession or control of a person who commits an underlying crime as defined by the statute, and the circumstances of the case show that the firearm facilitated or had a role in the crime, such as emboldening an actor who had the opportunity or ability to display or discharge the weapon to protect himself or intimidate others, whether or not such display or discharge in fact occurred, then there is a violation of the statute.

For example, the courts of appeals have concluded that even if a firearm is concealed or out of the defendant's reach, it has been "use[d]" to facilitate a drug trafficking offense if its apparent purpose is to embolden the dealer or protect the narcotics or the proceeds of the enterprise.[6] The courts have also

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[6] See, *e.g.*, *United States* v. *Castro-Lara*, 970 F.2d 976 (1st Cir. 1992) (empty pistol in briefcase within locked trunk "use[d]" during drug trafficking crime as it may have lent courage during transaction); *United States* v. *Hager*, 969 F.2d at 889 (pistol kept in boot in room where drug transactions occurred in order to protect the defendant and his cocaine); *United States* v. *Abreu*, 952 F.2d 1458, 1466 (1st Cir. 1992) (even though never fired, firearm kept to protect drug operation is used within the meaning of the statute); *United States* v. *Featherson*, 949 F.2d at 776 (gun concealed under mattress could have been used to protect narcotics); *United States* v. *Hadfield*, 918 F.2d 987, 998 (1st Cir. 1990) (although firearm was not at the site of the drug transaction, its apparent purpose was to protect the drug transaction), cert. denied, 111 S. Ct. 2062 (1991); *United States* v. *Poole*, 878 F.2d at 1394 (concealed but accessible firearm was "used to protect [drug] house members and the cocaine"); *United States* v. *Meggett*, 875 F.2d at 29 ("[p]ossession of a gun, even if it is concealed, constitutes 'use' if such possession is an integral part of the predicate offense and facilitates the

held that a firearm may be "use[d]" in the commission of a drug trafficking offense even when it is unloaded or inoperable and therefore could not be used as a weapon if the defendant desired or intended to do so.[7] Thus, contrary to petitioner's contention, the lower courts have held that the term "uses" must be construed broadly in keeping with its ordinary meaning.[8]

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commission of that offense"); *United States* v. *LaGuardia*, 774 F.2d 317, 321 (8th Cir. 1985) ("Section 924(c)(1) reaches the possession of a firearm which in any manner facilitates the execution of a felony.").

[7] See, *e.g.*, *United States* v. *Hill*, 967 F.2d 902, 905-907 (3d Cir. 1992) (unloaded, disassembled, concealed rifle); *United States* v. *Moore*, 919 F.2d 1471, 1476 (10th Cir. 1990) (defective machine gun), cert. denied, 111 S. Ct. 2812 (1991); *United States* v. *Coburn*, 876 F.2d 372, 375 (5th Cir. 1989) ("[t]he fact that a firearm is 'unloaded' or 'inoperable,' does not insulate the defendant from the reach of section 924(c)"); *United States* v. *York*, 830 F.2d 885, 891 (8th Cir. 1987) (lack of firing pin and defective cylinder), cert. denied, 484 U.S. 1074 (1988).

[8] To bolster his argument that the word "uses" is ambiguous, petitioner points to *United States* v. *Long*, 905 F.2d 1572, 1576 (D.C. Cir.) (Thomas, J.), cert. denied, 111 S. Ct. 365 (1990), which rejected the proposition that a firearm is used merely by reason of its presence in the vicinity of a drug trafficking offense. Pet. Br. 7. *Long* did not, however, hold that the term "uses" is ambiguous, or suggest that it should be confined to instances in which a firearm is actually employed as a weapon. To the contrary, the *Long* court acknowledged that "there are many ways in which a defendant can 'use' a firearm in relation to a drug trafficking crime," and stated that "a defendant can 'use' a firearm without actively employing it." *Id.* at 1576, 1577. The court explained that, although "the word 'use' is expansive," it requires the government to demonstrate some nexus "between a particular drug offender and the firearm that he allegedly 'used.'" *Id.* at 1577. Thus, *Long* fully supports the government's position in this case that the term "uses," while sufficiently broad to embrace a multitude of situations, is not rendered ambiguous by virtue of its wide scope.

A firearm employed as a medium of exchange for drugs is just as surely "use[d]" to "facilitate the predicate offense" (*Harris*, 959 F.2d at 261) as were the concealed, unloaded, or inoperable firearms found to have been embraced by the statute in other cases. Indeed, in cases such as this one, "the trade not only facilitates, but also becomes, an illegal drug transaction." J.A. 37. Accord *United States* v. *Harris*, 959 F.2d at 261-262. Thus, by employing a machinegun as the inducement for the exchange of cocaine, petitioner "use[d]" the gun during and in relation to a drug trafficking crime and thereby violated the plain terms of Section 924(c).

B. The Legislative History Of Section 924(c) Provides No Support For A Construction Of The Statute That Would Limit Its Application To Instances In Which A Firearm Is Used As A Weapon

Petitioner does not seriously dispute that the ordinary meaning of the word "uses" encompasses instances in which a firearm is exchanged for drugs. Instead, relying upon selected portions of the scant legislative history of Section 924(c), petitioner asserts that, despite the broad language Congress employed in drafting the statute, Section 924(c)(1) was intended to proscribe only "the actual use of a firearm as an offensive weapon." Pet. Br. 9.

As noted above, there is no reason to consider the legislative history of Section 924(c) at all. The statutory language is clear on its face, and it plainly

encompasses petitioner's conduct. While it may be appropriate in a narrow class of cases to examine the legislative history of a facially unambiguous statute in order to avoid an "absurd" result (see, *e.g.*, *United States* v. *Brown*, 333 U.S. 18, 27 (1948); see also *Public Citizen* v. *Department of Justice*, 491 U.S. 440, 470-471 (1989) (Kennedy, J., concurring in the judgment)), there is no need to do so here. There is nothing "absurd" about a statute that renders individuals who deal in both firearms and drugs susceptible to longer sentences than those who deal in drugs alone. Accordingly, the statute must be construed according to the ordinary meaning of its language.

Even if it were necessary to consult the legislative history to answer the question of statutory construction presented in this case, the result would be the same. "When properly read, the legislative record here overwhelmingly supports [petitioner's] conviction." *United States* v. *Phelps*, 895 F.2d at 1286 (Kozinski, J., dissenting from denial of rehearing en banc).

1. As originally enacted in 1968, Section 924(c) imposed mandatory sentences upon anyone who "(1) uses a firearm to commit any felony which may be prosecuted in any court of the United States" or "(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States."[9] The statute had its

[9] The statute, Pub. L. No. 90-618, § 102, 82 Stat. 1224, provided as follows:

> (c) Whoever—
>
> (1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or
>
> (2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,
>
> shall be sentenced to a term of imprisonment for not less than one year nor more than 10 years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than 25 years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

genesis as a floor amendment, sponsored by Representative Poff, to H.R. 17735, 90th Cong., 2d Sess. (1968), then known as the State Firearms Control Assistance Act of 1968. 114 Cong. Rec. 22,231 (1968); see *Simpson* v. *United States*, 435 U.S. 6, 13-14 (1978). The House of Representatives (see 114 Cong. Rec. 22,248 (1968)) and, subsequently, the conference committee (see H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. 12, 31 (1968)) adopted the Poff amendment,[10] and it was enacted into law as part of the Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1224.

Nothing in either the language of the Poff amendment or the legislative debate on the amendment supports petitioner's claim (Pet. Br. 9) that Congress intended Section 924(c)(1) to be limited to instances

[10] The conference committee revised the Poff amendment in ways unrelated to this case. In particular, the committee deleted a prohibition against concurrent sentences in the Poff amendment and permitted sentences of probation or suspended sentences for first violations of the statute. See H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. 31-32 (1968). The conference committee's version of the statute was accepted by both the House (114 Cong. Rec. 30,587 (1968)) and the Senate (*id.* at 30,183).

in which a firearm is employed as an offensive weapon. Representative Poff's description of the purpose of his amendment suggests instead that Congress understood the words of Section 924(c) to mean exactly what they say. Representative Poff explained that the effect of his amendment would be "to persuade the man who is tempted to commit a Federal felony to leave his gun at home. Any such person should understand that if he uses his gun and is caught and convicted, he is going to jail." 114 Cong. Rec. 22,231 (1968). That statement suggests that the purpose of Section 924(c)(1) is served whenever it is applied to a person who commits a federal crime and who fails to "leave his gun at home," regardless of the precise manner in which he uses the firearm in the commission of the offense.

In arguing for a narrower reading of Section 924(c)(1), petitioner relies primarily on the remarks of Representative Casey, who had previously introduced an amendment similar to that offered later by Representative Poff. Pet. Br. 9-10. Representative Casey's amendment would have imposed mandatory penalties on anyone who "during the commission of any robbery, assault, murder, rape, burglary, kidnaping, or homicide * * * uses or carries any firearm." 114 Cong. Rec. 22,229 (1968). After introducing his amendment, Representative Casey noted that the amendment's use of the phrase " 'or carries,' poses a problem. One of my colleagues will propose to offer an amendment to my amendment which will be to strike those words 'or carries,' so that it will apply only to those *who actually use a gun in the commission of the offenses enumerated.*" *Id.* at 22,229-22,230 (emphasis added).

According to petitioner, Representative Casey's statement indicates that Section 924(c)(1) was intended to proscribe only "the literal or actual 'use' of a firearm as an offensive weapon." Pet. Br. 10.[11] But Representative Casey did not say that the firearm had to be used as an offensive weapon; rather, he merely said that, if the anticipated amendment were adopted, the statute would proscribe only the actual use, not the mere carrying, of a firearm during commission of an enumerated offense. Even if Representative Casey's statement were relevant to the interpretation of Section 924(c)(1), therefore, it would not assist petitioner, because petitioner did "actually use a gun" in the commission of a drug offense.

In any event, Representative Casey's statement is of only limited value as an indication of Congress's intent regarding Section 924(c)(1). The Casey amendment was displaced by Representative Poff's amendment. 114 Cong. Rec. 22,231 (1968). Thus, it is the remarks of Representative Poff, not Representative Casey, that are of principal value as those of the sponsor of the legislation ultimately adopted,[12]

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[11] The Poff amendment did not, as Representative Casey had anticipated, "strike those words 'or carries' " from his amendment. 114 Cong. Rec. 22,230 (1968). Instead, the Poff amendment retained the "or carries" prong of the proposed statute, but limited liability under that prong to those individuals who carried a gun *unlawfully* during commission of a felony. *Id.* at 22,231. Thus, Representative Casey either misapprehended the nature of the Poff amendment or was not referring to that amendment at all when he made the statement cited by petitioner.

[12] Quoting a portion of this Court's decision in *Simpson*, petitioner erroneously implies, by including the name of Representative Casey in brackets, that Representative Casey

and "it is therefore reasonable to assume that [Representative Poff's remarks] represent the understanding of the Congressmen who voted for the proposal." *Busic* v. *United States*, 446 U.S. 398, 406 (1980) (footnote omitted); see also *Simpson*, 435 U.S. at 13 (referring to Representative Poff as "the provision's sponsor").[13] Accordingly, nothing about the 1968 enactment history of Section 924(c) provides any support for petitioner's construction of the statute.[14]

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was a sponsor of the amendment that became Section 924(c). Pet. Br. 11-12 (quoting *Simpson*, 435 U.S. at 14). Neither this Court's decision in *Simpson* nor the legislative history itself suggests that Representative Casey's remarks are entitled to the deference accorded those of a sponsor of legislation. See *Simpson*, 435 U.S. at 13-14.

[13] To be sure, as petitioner observes (Pet. Br. 11), Representative Poff did state that his amendment "is not in derogation of the Casey amendment. Rather, it retains its central thrust and targets upon the criminal rather than the gun. In several particulars, the substitute strengthens the Casey amendment." 114 Cong. Rec. 22,231 (1968). That statement does not suggest, however, that Representative Poff was somehow adopting everything Representative Casey said about his own amendment.

[14] Petitioner seeks additional support for his position from the fact that a conference committee subsequently adopted the House version of Section 924(c) instead of a Senate formulation that had been proposed by Senator Dominick. See Pet. Br. 12-14. The Dominick amendment would have made it illegal to commit any offense "which is a crime of violence * * * [while] armed with any firearm." 114 Cong. Rec. 27,142 (1968). Petitioner maintains that the conference committee's rejection of the Dominick amendment "'points in the direction of a congressional view that the section was intended to' apply only to the actual use of a firearm as an offensive weapon." Pet. Br. 14, quoting *Simpson*, 435 U.S. at 14-15. Petitioner's conclusion is a non sequitur. The Dominick amendment predicated liability on the mere

2. As part of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 1005(a), 98 Stat. 2138-2139, Congress revised Section 924(c) in several respects.[15] In particular, Congress substituted the phrase "crime of violence" for the term "felony" in order to include violent misdemeanors within the statute's ambit while excluding non-violent felonies. See S. Rep. No. 225, 98th Cong., 2d Sess. 313 n.9

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fact of being armed, rather than on the use of a firearm in the commission of a felony; Congress's decision to adopt the latter approach means at most that Congress wanted to punish those individuals who use firearms to commit felonies but not those individuals who happen to be armed with a firearm that has no role in or connection to the underlying offense. Nothing about that choice sheds any light on the question whether the facially broad term "uses" must be construed as if it read "uses as an offensive weapon."

[15] The 1984 amendment to Section 924(c) read as follows:

(c) Whoever, during and in relation to any crime of violence, including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence, be sentenced to imprisonment for five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

(1983). Additionally, Congress deleted the requirement that the firearm be carried "unlawfully," and substituted the requirement that the firearm be used or carried "in relation to" a predicate offense.[16]

The 1984 amendment also made clear that the mandatory sentence provided for in Section 924(c) was to be served prior to the start of the sentence for the underlying offense. Addressing this change, the Senate Judiciary Committee report explained that "[f]or example, a person convicted of armed bank robbery in violation of section 2113(a) and (d) and of using a gun in its commission (for example by pointing it at a teller or otherwise displaying it whether or not it is fired) would have to serve five years * * * before his sentence for the conviction under section 2113 (a) and (d) could start to run." S. Rep. No. 225, *supra*, at 313-314 (footnote omitted).

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[16] The Senate Judiciary Committee had recommended eliminating the requirement that the firearm be carried "unlawfully" when it considered a recodification of the federal criminal code in 1981. The Committee explained at that time that "the purpose of this section [924(c)] is to create a separate basis of criminal liability for the possession or employment of any firearm * * * in the commission of a crime because of the potential danger posed to human life by such conduct." S. Rep. No. 307, 97th Cong., 1st Sess. 890 (1981). "In the Committee's view, the mere carrying or possession of a firearm * * * during the commission of a crime indefensibly increases the risk of danger to other persons and [therefore] should be discouraged by penal sanctions." *Ibid.* These statements of the Senate Judiciary Committee provide further evidence of Congress's understanding of the scope of Section 924(c)(1) and indicate that the statute was intended to deter any employment of a firearm in a criminal enterprise because of the resulting increased danger to victims and bystanders.

Petitioner seizes on the Senate report's armed-bank-robbery example to support his argument that Congress intended Section 924(c)(1) to be limited to instances involving the actual use of a firearm as an offensive weapon. Pet. Br. 13. Petitioner's reliance on the bank-robbery example, however, is misplaced. The purpose of the example was merely to illustrate how the new consecutive sentencing provision added by the 1984 amendment was to apply. There is no indication that the passage was intended to define the scope of the statutory term "uses." Nor did the passage purport to be restrictive. On its face, the passage indicated that pointing or displaying a firearm was merely one "example" of how a gun could be used in a bank robbery. It did not suggest that the example was the only way in which a firearm could be "use[d]" within the meaning of Section 924(c)(1).[17]

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[17] The fact that the legislative history of the 1984 amendment does not expressly mention the exchange of firearms for drugs as another way of "us[ing]" a firearm provides no support for petitioner's conclusion that Congress intended to exclude such "uses" from the statute's scope. In the first place, Congress would have needed considerable prescience to anticipate the relevance of such a discussion at the time of the 1984 amendment; that amendment did not even apply to drug trafficking crimes, but was instead limited to crimes of violence. Moreover, as this Court has repeatedly reaffirmed, "[i]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history." *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 115 (1988); see, *e.g.*, *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 592 (1980); *Standefer* v. *United States*, 447 U.S. 10, 20 n.12 (1980); accord *United States* v. *Phelps*, 895 F.2d at 1284 (Kozinski, J., dissenting from denial of rehearing en banc) ("Congress need not contemplate every factual permutation to which its statutes are likely to apply").

Petitioner also relies upon a footnote in the Senate report that immediately follows the passage discussed above. That footnote provides in part:

> *Evidence that the defendant had a gun in his pocket but did not display it, or refer to it, could nevertheless support a conviction for "carrying" a firearm* in relation to the crime if from the circumstances or otherwise it could be found that the defendant intended to use the gun if a contingency arose or to make his escape. The requirement in the present section 924(c) that the gun be carried unlawfully, a fact usually proven by showing that the defendant was in violation of a State or local law, has been eliminated as unnecessary. The "unlawfully" provision was added originally to section 924(c) because of Congressional concern that without it policemen and persons licensed to carry firearms who committed Federal felonies would be subjected to additional penalties, even where the weapon played no part in the crime, whereas the section was directed at persons who chose to carry a firearm as an offensive weapon for a specific criminal act. * * * The Committee has concluded that persons who are licensed to carry firearms and abuse that privilege by committing a crime with the weapon, as in the extremely rare case of the armed police officer who commits a crime, are as deserving of punishment as a person whose possession of the gun violates a State or local ordinance. Moreover, the requirement that the firearm's use or possession be "in relation to" the crime would preclude its application in a situation where its presence played no part in the crime, such as a gun carried in a pocket and

> never displayed or referred to in the course of a pugilistic barroom fight.

S. Rep. No. 225, *supra*, at 314 n.10 (emphasis added).

The italicized portion of the footnote discusses only the scope of liability under the "carries" prong of the statute, but petitioner apparently draws from it the implication that a defendant cannot be guilty of "us[ing]" a firearm unless he has actually "'display[ed] it, or refer[red] to it.'" Pet. Br. 13. The footnote in fact says nothing of the kind; to the contrary, the only portion of the footnote that discusses the scope of the term "uses" (*i.e.*, the last sentence of the footnote) states that liability would be inappropriate where the gun's "presence played no part in the crime, such as a gun carried in a pocket and never displayed or referred to in the course of a pugilistic barroom fight." The clear implication of that statement is that Congress contemplated that the amended statute would apply in situations in which, as in this case, the firearm "played [a] part in the crime." See *United States* v. *Phelps*, 895 F.2d at 1283-1284 (Kozinski, J., dissenting from denial of rehearing en banc).

Even if petitioner's reading of the footnote were correct, and even if the footnote were entitled to weight in construing the meaning of the term "uses" as first enacted by Congress in 1968 (but see *Public Employees Retirement System of Ohio* v. *Betts*, 492 U.S. 158, 168 (1989); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 118 n.13 (1980)), it is difficult to understand what solace petitioner finds in the italicized language. Petitioner *did* "display" and "refer to" his MAC-10

machinegun in the course of conspiring and attempting to possess cocaine with the intent to distribute it; in fact, the machinegun was the "currency" that he intended to use to commit the crime. Whatever the precise limits on the scope of the term "uses," petitioner's conduct falls well within them, and nothing in the legislative history of the 1984 amendment leads to a contrary conclusion.[18]

3. In 1986, as part of the Firearms Owners' Protection Act (FOPA), Pub. L. No. 99-308, § 104, 100 Stat. 457, Congress further amended Section 924(c)(1) by "mandating that a person who uses or carries a firearm during and in relation to a drug trafficking crime shall be subject to a mandatory prison term of

[18] To support its holding that Section 924(c)(1) applies only to the use of a firearm as an offensive weapon, the Ninth Circuit in *United States* v. *Phelps* relied on the same footnote in the committee report and drew from it the conclusion that "Congress directed the statute at 'persons who chose to carry a firearm as an offensive weapon for a specific criminal act.'" *Phelps*, 877 F.2d at 30, quoting S. Rep. No. 225, *supra*, at 314 n.10. The footnote, however, does not support the *Phelps* court's conclusion. The passage quoted by the *Phelps* court was intended to explain why Congress had originally required that a firearm be carried "unlawfully" in order to constitute a violation of the "carries" prong of Section 924(c)(1). It was not addressed to the meaning of the term "uses," and it thus sheds no light on the proper interpretation of that term. In any event, it is of little consequence what the Senate Judiciary Committee in 1983 may have thought Congress meant in 1968 when it imposed liability on persons who "use[]" firearms; "subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment." *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. at 118 n.13; see also *Public Employees Retirement System of Ohio* v. *Betts*, 492 U.S. at 168.

five years." H.R. Rep. No. 495, 99th Cong., 2d Sess. 2 (1986). The amendment further authorized a ten-year mandatory prison term for using or carrying a machinegun during and in relation to a crime of violence or a drug trafficking offense and a mandatory 20-year term for any subsequent offense. *Ibid.*[19]

The House Judiciary Committee's report on FOPA explained that a principal purpose of the legislation was to "fight violent crime and narcotics trafficking," and in particular to "[p]rovide an important new weapon against narcotics traffickers." H.R. Rep. No. 495, *supra*, at 1, 2. The report added that the law enforcement provisions of FOPA were a response to "the need for more effective protection of law enforcement officers from the proliferation of machine guns and high powered 'assault-type' weapons that are increasingly being used by criminals." *Id.* at 7.

Petitioner's conduct falls squarely within the scope of the evil Congress sought to deter in adopting the 1986 amendment to Section 924(c). After first discussing the sale of his weapon to another drug dealer, petitioner offered his "fully automatic MAC-10" and an accompanying silencer to an undercover officer posing as a drug dealer in exchange for two ounces of cocaine. J.A. 17. Had the facts been as petitioner believed them to be and had the exchange been consummated, petitioner would have succeeded in arming a drug dealer with one of the most lethal weapons in the arsenal of the nation's criminal element, a weapon

[19] The Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6460, 102 Stat. 4373, further amended Section 924(c) by substituting a mandatory 30-year sentence for the ten-year sentence authorized by the 1986 amendment. Petitioner's 30-year sentence was imposed pursuant to that provision.

particularly favored by drug dealers for its compactness, high rate of fire, and lack of a discernible report when equipped with a silencer. See *United States* v. *Phelps*, 895 F.2d at 1285 (Kozinski, J., dissenting from denial of rehearing en banc). Thus, even though petitioner may not have used the MAC-10 machinegun as a weapon, his use of the firearm as an item of barter for drugs created precisely the type of risk the amended statute was designed to deter. As the District of Columbia Circuit observed in addressing an almost identical situation:

> It may well be that Congress, when it drafted the language of section 924(c), had in mind a more obvious use of guns in connection with a drug crime, but the language is not so limited, nor can we imagine any reason why Congress would not have wished its language to cover this situation. Whether guns are used as the medium of exchange for drugs sold illegally or as a means to protect the transaction or dealers, their introduction into the scene of drug transactions dramatically heightens the danger to society.

United States v. *Harris*, 959 F.2d at 262. Thus, the legislative history of the 1986 amendment, which illustrates Congress's concern about the proliferation of dangerous firearms, further confirms that Section 924(c)(1) applies to the exchange of firearms for drugs.

C. The Rule Of Lenity Has No Application In This Case, Because The Statute Is Not Ambiguous

Petitioner contends (Pet. Br. 14) that to construe Section 924(c)(1) to embrace the use of a firearm as a medium of exchange would violate the principle that ambiguity in the scope of criminal statutes must

be resolved in favor of lenity. The rule of lenity, however, is not applicable in this case.

The rule of lenity comes into play only when, after "[a]pplying well established principles of statutory construction" (*Gozlon-Peretz* v. *United States*, 111 S. Ct. 840, 849 (1991)), there is still a "grievous ambiguity or uncertainty in the language and structure of the Act." *Chapman* v. *United States*, 111 S. Ct. 1919, 1926 (1991). See, *e.g.*, *Bifulco* v. *United States*, 447 U.S. 381, 387 (1980) ("The Court has emphasized that the 'touchstone' of the rule of lenity 'is statutory ambiguity.' "). Thus, the rule of lenity is applicable, if at all, only "at the end of the process of construing what Congress has expressed, not at the beginning as an overriding consideration of being lenient to wrongdoers." *Gozlon-Peretz* v. *United States*, 111 S. Ct. at 849 (quoting *Callanan* v. *United States*, 364 U.S. 587, 596 (1961)).

There is no ambiguity here. The term "uses" and the phrase "in relation to," as they appear in Section 924(c)(1), embrace any employment of a firearm that facilitates a drug trafficking offense, and the legislative history confirms that interpretation. The language of the statute, therefore, amply "provide[s] fair warning concerning conduct rendered illegal." *Liparota* v. *United States*, 471 U.S. 419, 427 (1985). See also *United States* v. *Rodgers*, 466 U.S. 475, 484 (1984) (refusing to apply rule of lenity because "the critical statutory language * * * is not sufficiently ambiguous * * * to permit the rule to be controlling").

It is, moreover, inconsequential to the application of the rule of lenity that the term "uses" or the phrase "in relation to" may be susceptible to a more restrictive interpretation. As the Court recently explained:

> Because the meaning of language is inherently contextual, we have declined to deem a statute "ambiguous" for purposes of lenity merely because it was *possible* to articulate a construction more narrow than that urged by the Government. Nor have we deemed a division of judicial authority automatically sufficient to trigger lenity. If that were sufficient, one court's unduly narrow reading of a criminal statute would become binding on all other courts, including this one. Instead, we have always reserved lenity for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to "the language and structure, legislative history, and motivating policies" of the statute.

Moskal v. *United States*, 111 S. Ct. 461, 465 (1990) (citations omitted); see *United States* v. *R.L.C.*, 112 S. Ct. 1329, 1338 & n.6 (1992) (plurality opinion).

Finally, the result reached by the court of appeals in this case is not "so 'absurd or glaringly unjust'" (*United States* v. *Rodgers*, 466 U.S. at 484) as to call into question Congress's intent.[20] To the contrary, the

[20] Petitioner posits a hypothetical case in which a drug dealer exchanges drugs for a pawn ticket that is redeemable for a firearm at a subsequent time. Pet. Br. 15. That hypothetical case, which petitioner maintains is comparable to the instant case, demonstrates, in his view, that application of the term "uses" to an exchange of a firearm for drugs "would create an absurd result clearly not within the intent of Congress." *Ibid.* Petitioner's hypothetical case, however, is quite unlike this case. A defendant who has physical possession and control of a firearm and attempts to trade it for drugs after displaying it to the intended buyer has "use[d]" the firearm within any reasonable interpretation of the term, whereas it is at least open to question whether the exchange of a pawn ticket constitutes "use[]" of the pawned item as that term is ordinarily understood. In any event, it is far from "absurd" to impose enhanced penalties on persons who knowingly place dangerous weapons in the hands of drug dealers, and on the drug dealers who seek and obtain those weapons.

legislative history of Section 924(c), as it evolved into its present form, demonstrates that the purpose of the statute was to deter any employment of firearms during and in relation to a drug trafficking crime—a purpose that reaches the conduct at issue in this case. Under these circumstances, the rule of lenity has no role.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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